

2015 IL App (4th) 150037

NO. 4-15-0037

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 10, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

MARK HOWARD,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
LISA WEITEKAMP, as Freedom of Information	)	No. 14MR385
Officer for The Department of Corrections,	)	
Defendant-Appellee.	)	Honorable
	)	John W. Belz,
	)	Judge Presiding.

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PRESIDING JUSTICE KNECHT delivered the judgment of the court, with opinion.

Justices Turner and Steigmann concurred in the judgment and opinion.

### OPINION

¶ 1 In April 2014, plaintiff, Mark Howard, an inmate in the custody of the Illinois Department of Corrections (Department), filed a complaint for declaratory judgment and injunctive relief against defendant, Lisa Weitekamp, the then Illinois Freedom of Information Act (FOIA) (see 5 ILCS 140/1 to 11.5 (West 2012)) officer for the Department, requesting the trial court declare defendant to be in violation of FOIA and order her to release documents responsive to his FOIA request. In June 2014, defendant, through the Illinois Attorney General, filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-615 (West 2012)), alleging the requested documents were exempt from disclosure under FOIA. In December 2014, the trial court granted defendant's motion. Plaintiff appeals, asserting the trial court's dismissal was in error. We affirm.

¶ 2

## I. BACKGROUND

¶ 3 In April 2014, plaintiff filed a complaint for declaratory judgment and injunctive relief against defendant, requesting the trial court declare defendant to be in violation of FOIA (5 ILCS 140/1 to 11.5 (West 2012)) and order her to release documents responsive to his FOIA request. Specifically, plaintiff sought access to grievances and grievance responses from the administrative review board filed within the previous 15 months.

¶ 4 In June 2014, defendant filed a motion to dismiss under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)), asserting the requested documents were exempt from disclosure under section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2012)), and a memorandum in support of her motion. Defendant argued the requested documents were exempt from disclosure under section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2012)) because they were contained in plaintiff's master record file (see 730 ILCS 5/3-5-1(a)(12) (West 2012)), and access to the master record file was limited to authorized personnel of the Department (see 730 ILCS 5/3-5-1(b) (West 2012); 20 Ill. Adm. Code 107.310(a) (2013)), which did not include plaintiff (see 20 Ill. Adm. Code 107.310(a) (2013)).

¶ 5 In July 2014, plaintiff filed a response to defendant's motion to dismiss, asserting defendant's motion should be denied as she failed to prove the requested documents were exempt from disclosure, and a memorandum in support of his response. Plaintiff did "not dispute defendant[']s reference to his master file" but argued he should not be bound by a "statutory prohibition" because a literal application of the exemption would be contrary to maintaining the importance of an inmate's right to have his or her grievances acknowledged and relieve him from administrative exhaustion under section 1997(e) of the Prison Litigation Reform Act (42 U.S.C. § 1997e (2012)).

¶ 6 Following a December 2014 telephone conference, the trial court granted defendant's motion to dismiss. A docket entry includes the following findings: "[T]he requested documents are exempt from disclosure under \*\*\* FOIA because they are specifically prohibited from disclosure by law. The Information \*\*\* [p]laintiff seeks is kept in his master file[,] which is prohibited from disclosure."

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, plaintiff asserts the trial court's dismissal was in error. Plaintiff does *not* (1) dispute the requested documents—his grievances and grievance responses—are contained in his master record file, or (2) argue defendant's statutory analysis of section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2012)) was in error. Rather, plaintiff argues the exemption cannot be applied literally to encompass the requested documents because doing so defies common sense and ignores the statutory and regulatory support of an inmate's access to grievances and grievance responses. Specifically, plaintiff asserts the importance of a inmate's right to have his grievances addressed was determined by the legislature when it enacted sections 3-2-2(1)(h) and 3-8-8(a) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/3-2-2(1)(h), 3-8-8(a) (West 2012)) and by the Department when it promulgated sections 504.810, 504.830(d), and 504.850 of Title 20 of the Illinois Administrative Code (Administrative Code) (20 Ill. Adm. Code 504.810, 504.830(d), 504.850 (2003)). Plaintiff further asserts the literal application of the exemption would relieve him from administrative exhaustion under section 1997e(a) of the Prison Litigation Reform Act (42 U.S.C. § 1997e(a) (2012)).

¶ 10 In response, defendant asserts (1) the trial court properly concluded the requested documents stored in plaintiff's master record file were exempt from disclosure under section

7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2012)), and (2) plaintiff failed to justify departure from the plain language of Illinois law.

¶ 11

#### A. Standard of Review

¶ 12

A section 2-615 motion attacks the legal sufficiency of the complaint. *Aurelius v. State Farm Fire & Casualty Co.*, 384 Ill. App. 3d 969, 972, 894 N.E.2d 765, 769 (2008). "In ruling on a section 2-615 motion, the court only considers (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record." *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 25, 988 N.E.2d 984. A dismissal under section 2-615 of the Civil Code (735 ILCS 5/2-615 (West 2012)) is reviewed *de novo*. *Reynolds*, 2013 IL App (4th) 120139, ¶ 25, 988 N.E.2d 984. " '[T]his court may affirm the trial court's judgment on any basis that is supported by the record'. " *Elston v. Oglesby*, 2014 IL App (4th) 130732, ¶ 12, 21 N.E.3d 57 (quoting *Stoll v. United Way of Champaign County, Illinois, Inc.*, 378 Ill. App. 3d 1048, 1051, 883 N.E.2d 575, 578 (2008)).

¶ 13

#### B. Grievances and Grievance Responses

¶ 14

Our analysis begins with the statutory language, which remains the best indication of the legislature's intent. *Moore v. Green*, 219 Ill. 2d 470, 479, 848 N.E.2d 1015, 1020 (2006). "When the language is unambiguous, the statute must be applied as written without resorting to other aids of construction." *Moore*, 219 Ill. 2d at 479, 848 N.E.2d at 1021.

¶ 15

FOIA makes "available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act." 5 ILCS 140/3(a) (West 2012). Section 7(1) of FOIA (5 ILCS 140/7(1) (West 2012)) provides: "When a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to

redact the information that is exempt. The public body shall make the remaining information available for inspection and copying." Subject to the requirement in section 7(1), section 7(1)(a) exempts from inspection and copying "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." 5 ILCS 140/7(1)(a) (West 2012).

¶ 16 Section 3-5-1(a)(12) of the Unified Code (730 ILCS 5/3-5-1(a)(12) (West 2012)) requires the Department to maintain a master record file on each committed person and to include in the file "any grievances filed and responses to those grievances." Section 3-5-1(b) of the Unified Code (730 ILCS 5/3-5-1(b) (West 2012)) mandates the master record file "be confidential and access shall be limited to authorized personnel of the respective Department." Section 107.310(a) of Title 20 of the Administrative Code (20 Ill. Adm. Code 107.310(a) (2013)) further provides: "The master record files of offenders shall be confidential and access shall be limited to authorized persons. Offenders shall not be permitted access to their master record files except as expressly permitted by law, including this Subpart." Plaintiff cites no statute or regulation expressly permitting access to a committed person's grievances and grievance responses contained in his or her master record file. Cf. 20 Ill. Adm. Code 107.310(b) (2013) (providing access to medical records); 20 Ill. Adm. Code 107.330(a)(3), (b)(1) (2013) (providing access to "clinical" (mental health) records); 20 Ill. Adm. Code 107.420 (2013) (providing access to criminal history records).

¶ 17 "It is a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or another act, which both relate to the same subject, the specific provision controls and should be applied." *People v. Villarreal*, 152 Ill. 2d 368, 379, 604 N.E.2d 923, 928 (1992). Although FOIA created a general

right of access to public records, section 3-5-1(b) of the Unified Code (730 ILCS 5/3-5-1(b) (West 2012)) and section 107.310(a) of Title 20 of the Administrative Code (20 Ill. Adm. Code 107.310(a) (2013)) control as they contain more specific provisions, which limit an inmate's right of access. As the more specific provisions limiting an inmate's right of access control, defendant's denial of plaintiff's request for access to grievances and grievance responses contained in his master record file was proper under section 3-5-1(b) of the Unified Code (730 ILCS 5/3-5-1(b) (West 2012)) and section 107.310(a) of Title 20 of the Administrative Code (20 Ill. Adm. Code 107.310(a) (2013)). See *Lucas v. Prisoner Review Board*, 2013 IL App (2d) 110698, ¶ 22, 999 N.E.2d 365 (noting an argument that the general right of access created by FOIA controlled over the specific limitation of access under section 3-5-1(b) of the Unified Code (730 ILCS 5/3-5-1(b) (West 2010)) would be meritless); *Holloway v. Meyer*, 311 Ill. App. 3d 818, 824, 726 N.E.2d 678, 683 (2000) (finding, to the extent the general right of access created by FOIA conflicted with a specific provision of the Unified Code limiting an inmate's right of access, the specific provisions of the Unified Code controlled).

¶ 18 Having concluded the more specific provisions of section 3-5-1(b) of the Unified Code (730 ILCS 5/3-5-1(b) (West 2012)) and section 107.310(a) of Title 20 of the Administrative Code (20 Ill. Adm. Code 107.310(a) (2013)) control over the general provisions of FOIA, we need not address whether an exemption under FOIA was also applicable to warrant dismissal of plaintiff's complaint.

¶ 19 III. CONCLUSION

¶ 20 We affirm the trial court's judgment.

¶ 21 Affirmed.